

# Advisory Opinion

IECDB AO 2010-11

Subject: Contributions to Independent Expenditure Committee

TO ALL INTERESTED PERSONS:

Pursuant to Iowa Code section 68B.32A(12) and rule 351—1.2, the Iowa Ethics and Campaign Disclosure Board issues this opinion on contributions to an independent expenditure committee. We note at the outset that the Board's jurisdiction is limited to the application of Iowa Code chapters 68A and 68B, Iowa Code section 8.7, and rules in Iowa Administrative Code chapter 351. Advice in a Board opinion, if followed, constitutes a defense to a subsequent complaint based on the same facts and circumstances.

OPINION:

In response to the Citizens United v. Federal Election Commission decision that permitted, in part, corporations to engage in express advocacy independent expenditures, Iowa's General Assembly enacted 2010 Iowa Acts, Senate File 2354. That legislation amended Iowa Code section 68A.404 regulating independent expenditures and Iowa Code section 68A.503 regulating corporate contributions.

In IECDB Advisory Opinion 2010-03, the Board opined that it was permissible for corporations to make direct contributions to an "independent expenditure committee" so long as the contributions were disclosed. This same analysis would apply to other persons making contributions to an independent expenditure committee. The question has now been raised whether a contributor to an independent expenditure committee is required to file any campaign disclosure reports?

A "contribution" to an independent expenditure committee is not the making of an "independent expenditure." In addition, unlike contributors to campaign committees, there are no requirements in the law for a contributor to an independent expenditure committee to file a separate campaign disclosure report.<sup>1</sup> Thus, a contributor to an independent expenditure committee is not required to separately file campaign disclosure reports.

We do note that if a contributor to an independent expenditure committee receives a contribution itself from another person for the "purpose of furthering the independent expenditure," then that fact should be disclosed to the independent expenditure committee. The independent expenditure committee would then be required to disclose both contributors. In another words, a person cannot shield a contribution to an

independent expenditure committee by instead donating the money to some other contributor to the independent expenditure committee.<sup>2</sup>

In closing, the Board encourage persons involved with independent expenditure activities to review Iowa Code section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, the Board's rules on independent expenditures in 351—Chapter 4, and IECDB Advisory Opinions 2010-01, 2010-03, 2010-05, 2010-07, and 2010-09.

#### BY DIRECTION AND VOTE OF THE BOARD

James Albert, Board Chair  
Patricia Harper, Vice Chair  
Gerald Sullivan  
John Walsh  
Saima Zafar  
Carole Tillotson

Submitted by: W. Charles Smithson, Board Legal Counsel

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<sup>1</sup>Contributors, other than an individual human being, are required to file a campaign disclosure report when making contributions in the aggregate exceeding \$750 in a calendar year to campaign committees.

<sup>2</sup> Such a situation will be deemed by the Board to be the function equivalent of an "earmarked" contribution and would require public disclosure of both persons.